PREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 441

DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO,
Respondents,

AND

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,
Respondent.

REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.[1]

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1. The cost of printing this Reply is being paid by the Roger Baldwin Foundation of the American Civil Liberties Union, as are all other costs incurred with respect to the filing of the Petition for Certiorari in this case.

Respondents' brief in opposition to the petition for a writ of certiorari is extraordinary.

Respondents apparently contend that although the Illinois Supreme Court considered the question for one and one-half years, in two separate actions, it has made no final decision on the question of whether petitioners are entitled to the transcript of the report of proceedings at their trial. On the merits, respondents contend that "in most instances" Illinois trial courts deny indigent misdemeanants an effective appeal by setting appeal bonds which the indigents cannot post and that, therefore, it would be meaningless to grant transcript to such indigents.

Respondents' statement that petitioners have filed the record on appeal in Case No. 40281 before the Illinois Supreme Court is not true. Although a "short record" has been filed in support of their motions for transcript, the full record on appeal has not been filed. It has not been filed because it should contain the full report of proceedings, which the petitioners have been unable to obtain.

Without the report of proceedings petitioners have been unable to take the initial steps to consummate their appeal. However, the Illinois Supreme Court has certainly made its final ruling with respect to petitioners' right to transcript and it has denied transcript to petitioners both in Case No. 40281 and in the mandamus action, Illinois Supreme Court No. 40300. The fact that mandamus actions before the Illinois Supreme Court may be "completely discretionary" under Illinois law[2] in no way detracts from the fact that a final ruling has been entered in that case denying petitioners the report of proceedings. Petitioners cannot prosecute an adequate appeal without the report of proceedings and it is ludicrous to suggest, considering the several orders entered by the Illinois Supreme Court and

2. Respondents' brief, p. 4.

the many months during which they considered the matter, that the Illinois Supreme Court has not made a final decision denying transcript to petitioners.

Respondents argue that in most cases effectual relief would not be granted to indigent misdemeanants in Illinois even if they were afforded a transcript of the report of proceedings because the Illinois trial courts effectively deny such indigents a meaningful appeal by setting appeal bonds which they cannot post. This may be factually correct. Indeed, one of the respondents, Magistrate Maurice W. Lee, set appeal bonds in this case requiring the indigent defendants (petitioners herein) to deposit $2,000 in order to stay out of jail pending appeal. However, this amount was reduced on review to $25, which was paid by a religious organization. While it may be that in most cases indigent misdemeanants in Illinois are denied an effective appeal because of the appeal bonds set by the Illinois trial courts, this practice will have to be challenged in another case. Petitioners have been denied an effective appeal, not because of an excessive appeal bond, but because they have been arbitrarily denied transcript of the report of proceedings at their trial.[3]

In their concurring opinion in *Marino* v. *Ragen*, 332 U. S. 561 (1947), Justices Rutledge, Douglas and Murphy stated that, "If the federal guarantee of due process in a criminal trial is to have real significance in Illinois, it is imperative that men convicted in violation of their constitutional rights

3. Respondents argue for a rule that the granting of transcript to indigent misdemeanants "should not be mandatory but rather discretionary." (Respondents' brief, p. 4.) As was pointed out in their petition, petitioners were denied transcript solely on the ground that they had not been convicted of felonies. Furthermore, although some Illinois trial courts exercise the power to grant transcript to indigent misdemeanants, their right to do so is not set out in any statute, court rule or published opinion, and nowhere are there any standards or guidelines for the trial courts to follow in exercising this power. (Petition, pp. 14-15.)

have an adequate opportunity to be heard in court." 332 U. S. at 570. It is discomforting that twenty-one years after the *Marino* decision the State of Illinois defends a practice of denying indigent misdemeanants the report of proceedings at their trial on the ground that most of such indigents have already been denied their right to be heard on appeal because of the bonds set by the trial courts.

Respectfully submitted,

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